

L E S S O N 3

The Bill of Rights

THINKING FOCUS

How does the Bill of Rights balance governmental powers with the rights of individuals?

Key Terms

- free press
- amendment



▲ *Antifederalist Elbridge Gerry warned citizens that a bill of rights was necessary to protect individual liberties.*

Helping to fuel the strong feelings for the bill of rights in the 1780s were Americans' memories of New Yorker John Peter Zenger's fight for freedom of the press fifty years earlier. Every Monday in 1733, Zenger's *New York Weekly Journal* would appear with stinging articles criticizing the British colonial government: Governor William Cosby is a tyrant! An enemy of justice!

Government officials were outraged. Roughly one year after the newspaper was first published, British officials jailed Zenger for his criticism of the colonial government in New York. Although Zenger wrote few of the articles himself, he was held solely responsible since he was the newspaper's publisher. Zenger was kept in jail for more than 11 months since he could not afford to pay the bail. Still the newspaper appeared every Monday. With whispered instructions she received through a hole in the prison door, Zenger's wife, Anna, continued to publish the newspaper so hated by the British.

Finally, the case was brought to trial. The financial backers of Zenger's newspaper hired Andrew Hamilton of Philadelphia to represent Zenger. Hamilton was considered one of the most brilliant lawyers in the colonies. Hamilton argued that Zenger had only published the truth, and that he should not be punished for publishing the truth. The jury agreed and they found Zenger not guilty. After his release, Zenger printed a complete account of his trial and the British authorities didn't stop him. This was considered the first major victory for a **free press** that is, news media such as newspapers and magazines that are unrestricted by the government.

Americans did not forget the case. Nor did they forget other memories of British rule. The British army had forced the owners of private homes to house soldiers. Colonial customs officials had invaded homes to search for and seize smuggled goods. With a bill of rights, the new Constitution would guarantee that such governmental practices would be only memories of the past.

Why Massachusetts Resisted

"There is no declaration of rights." This was how George Mason had objected to the Constitution in 1787. And these words became the rallying cry of the Antifederalists back in the states. The debates at the Massachusetts state ratifying convention would prove to be the turning point for the adoption of the bill of rights.

"Beware! beware!—you are forging chains for yourselves and your children—your liberties are at stake," exclaimed Elbridge Gerry in November 1787, after he had returned to Massachusetts. The lack of a bill of rights was the most serious obstacle to winning the support of old patriots such as Samuel Adams and John

Hancock. Adams planned to oppose the Constitution at the Massachusetts state convention, because he was determined “to protect and cover the rights of Mankind” against the threat of a strong central government.

Wanted: Guaranteed Rights

After the Philadelphia Convention, most of the men who had written the Constitution could not understand why a bill of rights was a serious issue for many states. They believed that the Constitution, as it was, could stand on its own. On the last day of the Convention, George Mason proposed that a bill of rights be added to the Constitution. Elbridge Gerry agreed with him but other delegates had argued that the states’ own declarations of rights would be sufficient to protect individual liberties. They had voted against the motion to add a bill of rights at the Convention.

A Winning Strategy

Although many Federalists continued to consider a bill of rights unnecessary, some were willing to compromise on this issue in order to establish a new government. The Federalists had already used compromise as a unifying force in Philadelphia. Because they feared defeat in the Massachusetts ratifying convention, Federalist leaders decided to gain support by drafting a list of **amendments**, additions meant to improve the Constitution. They persuaded John Hancock, the most popular man in Massachusetts, to present these



amendments to the state convention. The proposed amendments made the Constitution acceptable to many who had formerly opposed ratification.

The winning strategy of the Massachusetts Federalists turned the tide of ratification. As other states debated the Constitution, they too insisted on amendments that would guarantee a person's rights. ■

▲ The British army occupied Boston in 1768 to enforce the writs of assistance, which gave officials blanket authority to carry out searches at any time and any place.

■ What made some Federalists change their minds about including a bill of rights in the Constitution?

Balancing the Constitution

The framers of the Constitution had worked hard to create a system that balanced the powers of the three branches of government—legislative, executive, and judicial. The amendments proposed by the state ratifying conventions were aimed at another kind of balance: balancing the rights

of the states and of individual citizens against the powers of the central government.

James Madison was one of the Federalists who had expressed concerns about the protection of basic rights, through his part in writing *The Federalist*. During the debates in

Virginia, Madison promised to work for a bill of rights once the Constitution was ratified. After he was elected in 1789 to the first Congress, he pressed for passage of a series of amendments to the new Constitution.

Rights for the People

The amendments drafted at the state conventions listed the rights of individual citizens and the rights of the states. These were rights the national government could not take away.

Many advocates of a bill of rights also wanted the Constitution to state clearly that any rights not given to the national government by the states be reserved to the states or to the people.

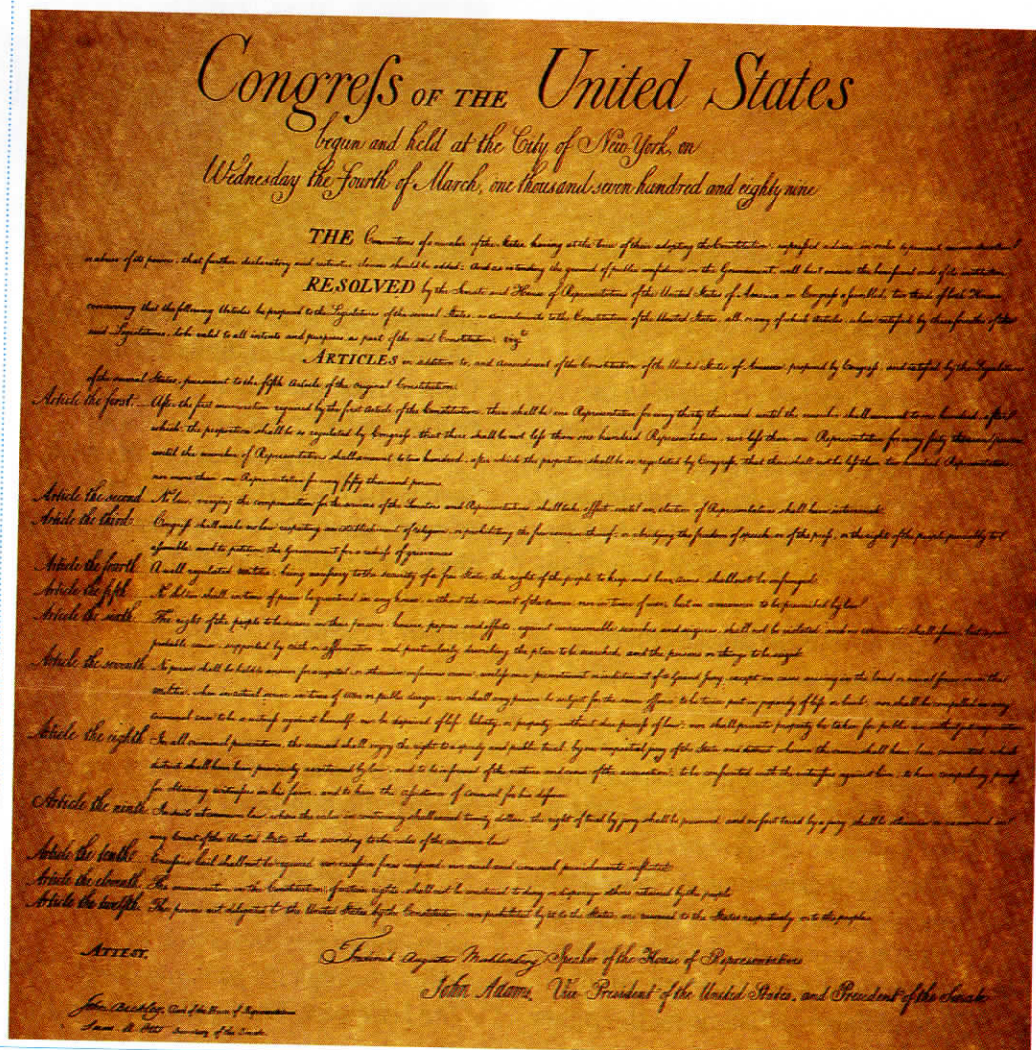
The first Congress under the Constitution met in New York in March 1789. Most men elected to Congress had been delegates to the Convention

of 1787 or to the state ratifying conventions. Madison and other members of the first Congress combined the many proposed amendments into a list of twelve. Some amendments included more than one right. For example, the First Amendment was written to protect freedom of speech, press, assembly, and petition. Congress voted in favor of the twelve amendments in September 1789 and sent them to the states for ratification.

Ratification of Ten Amendments

Although the men who framed the original Constitution had not included a bill of rights at first, they did have the foresight to include ways to amend the Constitution. Americans are able to change the Constitution or add to it. An amendment may be proposed by two-thirds of both houses of

► Of the twelve amendments proposed for a bill of rights, two were not ratified. One limited the size of the House of Representatives; the other forbade members of the House and Senate to raise their own salaries.



Congress, or the legislatures of two-thirds of the states can propose a constitutional convention. If three-fourths of the states ratify a proposed amendment, it then becomes part of the Constitution.

Thomas Jefferson observed this amendment process from France. He commented proudly that “the example of changing a constitution by assembling the wise men of the state instead of assembling armies” would be worth “much to the world.”

The system worked remarkably well. By December 15, 1791, the states had ratified ten out of the twelve proposed amendments to the Constitution, and the United States had its Bill of Rights. Look at page 647 of this book and find where the Bill of Rights now appears in the Constitution along with more recent amendments.

The Framework Completed

The Bill of Rights balances the Constitution by giving people legal protection against abuses of power. The First Amendment, for example, prohibits the government from attempting to control what people think, say, or write. It grants people the right to worship according to their own beliefs, without interference from the government. The Fourth Amendment protects people from unreasonable searches and seizures of their private property. The Sixth Amendment guarantees the right to a speedy and fair trial by jury. The Eighth Amendment prohibits cruel and unusual punishment. When these or

any other declared rights are violated, individuals may appeal to the courts.

The first ten amendments brought the nation together under one federal government by removing most of the Antifederalists’ fears. Now that the Constitution included the Bill of Rights, many Antifederalists became active in the new government. Edmund Randolph was named the first attorney general by Washington. George Clinton became Vice President under Jefferson and again under Madison. And James Monroe, an Antifederalist from Virginia, eventually became the fifth President of the United States.

The government created by the Constitutional Convention of 1787 has worked for more than 200 years because its wise authors made it both strong and flexible. With the addition of the Bill of Rights, the Constitution has also protected the basic freedoms and rights that Americans cherish.

The framers could not have foreseen all the conflicts, problems, and needs of a growing nation. The Constitution was indeed sketchy. But with its amendment procedure, it has provided a means to accommodate changes. As the U.S. Supreme Court’s Chief Justice John Marshall once stated, the Constitution was “intended to endure for ages to come, and, consequently to be adapted to the various crises of human affairs. ■



▲ *The states still had to work out many details. There was not yet an official arrangement of the stars in the U.S. flag.*

■ *How did the amendment process provide the flexibility to make the Constitution strong?*

R E V I E W

1. **FOCUS** How does the Bill of Rights balance governmental powers with the rights of individuals?
2. **CONNECT** Why did Federalists first oppose the addition of a bill of rights? Why did most Antifederalists believe such a bill was absolutely necessary?
3. **HISTORY** Explain why the strategy of the Federalists to compromise in Massachusetts also helped the Antifederalists in the other states.
4. **CONSTITUTIONAL HERITAGE** Describe the process by which the Bill of Rights was added to the Constitution.
5. **CRITICAL THINKING** In 1791, the Bill of Rights was ratified. Since then 16 amendments have been ratified. Why do you think Americans have continued to revise the Constitution?
6. **ACTIVITY** Prepare and deliver a one-minute presentation on the basic rights guaranteed by the Bill of Rights.